

and proceedings affecting the various phases of medical practice, the conduct of hospitals and the enforcement of public health laws.

Obligations of Physician, Malpractice, Action for Damages

A case that all doctors might study with profit is that of John W. Hesler, respondent, v. California Hospital Company, et al, appellants. The complaint alleged that both defendants were engaged in the practice of medicine; that the Hospital Company agreed to provide for the plaintiff all the necessary medical and surgical treatment and all necessary medical and hospital service during a certain period; that the doctor assigned by the hospital to the plaintiff's case failed to use ordinary diligence, care and skill in treating the plaintiff, and that by reason of such failure plaintiff's illness progressed unfavorably and he was put to great expense and damaged in the sum of \$5,644.

A trial was held in which these alleged facts were presented and the jury returned a verdict and judgment for \$2500. An appeal was taken from this decision, the appellants contending that certain errors were committed by Judge E. P. Shortall in his instructions to the jury. The instructions which Judge Shortall gave form the basis of the reversal of his decision and the judgment, and hence we quote from the court's instructions paragraphs 5, 6, 9, 10 into which errors crept.

"5. To sustain an action it is not necessary to establish gross culpability; mere evidence of want of proper or ordinary care or attention and advice in the discharge of duty by a physician is sufficient to take the case to the jury.

"6. Civil malpractice may be either active or passive. It is active when a certain course of treatment is adopted and followed which is not sustained by authorities; it is passive when those things in treatment are omitted which should have been done in order to obtain a result approximating to perfectness.

"9. As a general rule, he who undertakes for a reward to perform any work is bound to use a degree of diligence, attention, and skill adequate to the performance of his undertaking; that is, to do it according to the rule of the art.

"10. The physician must give proper instructions to his patient how to take care of himself, and what diet to adopt; and in case the physician fails to give these instructions, he is liable for any injury that results from such failure."

The law on the subject of care and skill required of physicians in the treatment of patients is well settled. "A physician and surgeon, by taking charge of a case, impliedly represents that he possesses, and the law places upon him the duty of possessing, that reasonable degree of learning and skill that is ordinarily possessed by physicians and surgeons in the locality where he practices, and which is ordinarily regarded by those conversant with the employment as necessary to qualify him to engage in the business of practicing medicine and surgery. Upon consenting to treat a patient, it becomes his duty to use reasonable care and diligence in the exercise of his skill and the applications of his learning to accomplish the purpose for which he was employed. He is under the further obligation to use his best judgment in exercising his skill and applying his knowledge." *Pike v. Honsinger*, 155 N. Y. 209. (63 Am St. Rep. 655, 49 N. E. 7621.) "The difficulties and uncertainties in the practice of medicine and surgery are such that no practitioner can be required to guarantee results, and all the law demands is that he bring and apply to the case in hand that degree of skill, care, knowledge, and attention ordinarily possessed and exercised by practitioners of the medical profession under like circumstances." (*Zoterell v. Repp*, 187 Mich., 330 (153 N. W. 695)).

"It is never enough to show that he has not treated his patient in that mode, nor used those measures, which in the opinion of others, even medical men, the case required; because such evidence tends to prove errors of judgment, for which the defendant is not responsible as much as the want of reasonable care and skill, for which he may be responsible" (*Leighton v. Sargent*, 27 N. H. 474 (59 Am. Dec. 388)).

Instruction 5 is to the effect that a physician is liable in damages if he fails to give "proper" advice to his patient. Instruction 10 reiterates this doctrine. Instruction 6 gives the jury to understand that a physician is guilty of malpractice and liable in damages if in treating a patient he fails to do anything necessary to obtain an approximately perfect result. The law, as above stated, does not require that the instructions and advice given by a physician to a patient should be at all events and beyond question "proper," or that his treatment should be certainly such as to obtain an approximately perfect result. It requires only, first, that he shall have the degree of learning and skill ordinarily possessed by physicians of good standing practicing in that locality, and, second, that he shall exercise reasonable and ordinary care and diligence in treating the patient and in applying such learning and skill to the case. The law takes cognizance of human weakness and liability to err in the exercise of reasonable and ordinary care and diligence to avoid error. These instructions require more; they require that the advice given shall be "proper," which implies that no error shall be committed; they require that the physician shall do everything to be done to produce an approximately perfect result; that he guarantees that his treatment shall be that of quality; whereas the law only demands that he use reasonable care to attain such approximate perfection. Instruction 9 declares that the physician is bound to use, and of course to have, a degree of skill "adequate" to the performance of his undertaking; the law requires that he have the degree of skill ordinarily possessed by reputable physicians practicing in that locality. This may or may not be "adequate" to the performance of his undertaking, according to the meaning to be given to the word "undertaking." If it was intended to mean that he undertakes a cure, or to produce a result approximating perfection, as stated in instruction 6, or that he undertakes to use the highest possible degree of skill, the standard is higher than the law requires.

The court below in other instructions stated the rule by which the defendants were bound, accurately and clearly. There is a clear conflict in the instructions. We are unable to determine which set of rules the jury followed. The case of the plaintiff on the merits, at best, is not strong. The judgment is reversed."

This decision was written by Justice Shaw and concurred in by Angellotti, C. J., Richards J., Sloss, J., Melvin, J., Wilbur, J., and Lorigan, J.

State Board of Medical Examiners

Collected Clippings on Medical Law Enforcement

"CHIROPRACTIC TREATS NOTHING"

An editorial in the Covina "Citizen" under date of February 12, 1920, severely criticizes the Board of Medical Examiners for the arrest of chiropractors charged with practicing without a license. "Chiropractic fits nicely the niche left vacant by all other schools. It treats nothing; it heals nothing."—Covina "Citizen."

Los Angeles.—Los Angeles Times, March 31, 1920.

Dr. Silverman is charged with misuse of the mails to defraud in connection with an alleged blood test laboratory.

"Doctor" James Ward Arrested

E. C. Watson, alias Dr. James Ward, arrested in New Orleans, charged with passing fictitious checks in many Northern California towns.—San Francisco Bulletin.

Dr. Frank Thomas Found Guilty

Dr. Frank Thomas, 72-year-old surgeon of San Francisco, charged with the murder of Rose White of Vallejo, whose body was found in his office November 28, 1919, was found guilty of second degree murder by a jury in Superior Judge Michael Roche's court, April 19, 1920. He faces a prison term of from ten years to life.—San Francisco Call and Post.

Oakland Chiropractor Found Guilty

Linden D. McCash, chiropractor, of Oakland was found guilty of violating the Medical Practice Act, and on April 23 sentenced to pay a fine of \$200.00 or serve 100 days.

Another Law Violator Pleads Guilty

Pasquale Marini, 230 Capp Street, San Francisco, plead guilty of violating Sec. 17 of the Medical Act and on April 20 paid a fine of \$100.00.

Collected Clippings in Press**THE FOUNTAIN-HEAD OF CHIROPRACTIC;
WHAT OF ITS PRODUCT?**

The Palmer School of Chiropractic advertises itself as "the fountain-head" of chiropractic. The following will give some intimation in regard to the character of the "stream" that comes from it:

The 1920 annual announcement of this school states that students are taught not only "how to act with patients in and out of office" but also "how to successfully advertise." From the beginning, therefore, methods are taught which, from the time of Hippocrates, have been looked on as quackery. It is also stated that the students complete their "freshman," "sophomore," "junior" and "senior" courses in four months each, or altogether in sixteen months. In another place the reader is informed that, in case the student finds it impossible to remain for more than twelve months, the school will, nevertheless, confer on him the degree of D. C. (Doctor of Chiropractic). By remaining at the school six months longer he would be granted an additional degree, that of Ph. C. (Philosopher of Chiropractic), if he got "an A grade on each and every paper submitted."

The statement that a "common school" education is required for admission may mean nothing more than the bare ability to read and write. Granting, however, that it is the equivalent of the eighth grade in the public schools, the professional training, according to the usual methods of calculating standards in general education, would be considered of no higher grade than that of one or one and a half years of high school work. This low entrance qualification is in marked contrast to the requirements for admission to medical schools in which students must have completed a four year high school course and in addition two years of work in a reputable college of arts and sciences, including courses in physics, chemistry and biology.

Another significant statement in this announcement is that a student "may matriculate on any week day." This indicates at once that no intensive course of study is given in this institution such as is required in medical schools. No student entering a medical school a week or more after the opening of any laboratory course (for example, histology, pathology or bacteriology) could possibly be able intelligently to carry on the work in such course because of the large amount of work missed during the previous week's absence.

Evidently, there are no such disagreeable handicaps in the study of chiropractic.

The announcement of this school states that in its "scientific course" the student is required "to attend" (note the exact figures) a total of 4,103½ class hours. This would be fifty-three hours a week for eighteen months, or eighty hours a week—twelve hours a day—for a calendar year. Education does not depend on the number of hours of instruction, however, so much as on the subject-matter taught and the ability of the instructor to impart knowledge. As a matter of fact, the requirement of actual class-room work in our highest grade medical schools in four college years of from eight to nine months each is only about 4,000 hours. Each class hour, however, presupposes from one to three hours of outside preparation so that, if measured by the claims of this chiropractic college, the total hours required by medical schools would be somewhere between 8,000 to 12,000 hours!

The text-books used also are interesting. In anatomy, the text used is said to be that prepared by Mabel H. Palmer, D. C., Ph. C. (1905), the wife of B. J. Palmer, who is the president of the institution. Court reports in 1910 show that the latter had only a common school education and had never matriculated in any school, college or university, other than a chiropractic college. For those who never had a training in the scientific methods of treating the sick, an attempt to teach others how to do so is equal to "the blind leading the blind." Text-books of their own writing are also used by the teachers in symptomatology, gynecology and chemistry, who likewise have no degrees in medicine. Incidentally, the sale of these text-books adds considerably to the revenue obtained from students.

Speaking of revenue, besides the income from text-books, this institution charges for its twelve or eighteen months' course a "spot cash" sum of \$300—more than a year's tuition last year in any of the highest grade medical schools of the country! If the fee is paid in "deferred payments" it is \$350. If a husband and wife, however, take the course the combined fee "spot cash" is \$375, or, if in "deferred payments," \$450. Reports of inspection of this school show that there are few, if any, all-time teachers. Such few laboratories as the school possesses are reported also to have the barest minimum of equipment. Most of the fees obtained, therefore, must be clear profit. This is in marked contrast with the teaching of scientific medicine in medical schools where the actual average expense of teaching a student each year is more than three times what the student pays in tuition fees!

The low ideals of the leaders of this cult are shown in the report of Mr. Justice Hodgkins of Ontario, issued a few years ago. B. J. Palmer himself is quoted as having stated that bacteriology was the "greatest of all gigantic farces ever invented for ignorance and incompetency" and that "the analysis of blood and urine is of no value." In this same report other leaders of chiropractic deride also the study of *materia medica* and chemistry and state they have "no earthly use for diagnosis." They place themselves, therefore, in direct opposition to Pasteur, Koch, Laveran, Flexner and others whose discoveries during the last half century have revolutionized the practice of medicine and saved countless thousands of lives! No wonder Justice Hodgkins concludes that he could not bring himself "to the point of accepting, as part of the legalized medical provision for the sick, a system which denies the need of diagnosis, refers 95 per cent. of disease to one and the same cause, and turns its back resolutely on all modern medical scientific methods as being founded on nothing and unworthy even to be discussed."